

Consent Agenda
Tree Removal Appeal Case A-2201

Removal of one fourteen (14)-inch diameter Elm tree
located in the rear yard of the property.

Mr. Heinrich Hanada
3927 Oliver Street



To: Chevy Chase Village Board of Managers
From: Laura Billings
Date: September 28, 2015
Re: TOB Report Regarding Case A-2201, Mr. Heinrich (Miki) Hanada, 3927 Oliver Street: Removal of one 14-inch diameter American Elm from the rear yard.

Mr. Miki Hanada wishes to remove a mature American Elm from his backyard at 3927 Oliver Street. Mr. Hanada is constructing a rear addition and pool. He is re-landscaping his yard and wishes to remove the Elm as part of that project. Mr. Hanada duly filed an appeal of the Village Manager's decision to deny removal of the American Elm and was then referred to the Tree Ordinance Board.

I contacted Mr. Hanada's closest neighbors (where possible) about the proposed removal. No neighbor expressed concern regarding the removal.

The three members of the TOB inspected the tree and potential sites for reforestation. The tree appears to have been excessively pruned and lacks the number of branches and leaves that one would expect to see. Because of the excessive pruning, the tree is unattractive and appears to be in poor health.

The removal of the American Elm would leave Mr. Hanada's property bereft of any canopy tree. The TOB decided that Mr. Hanada can remove the Elm but must reforest on his property or in the abutting right-of-way. He further agrees to reforest at least 5 feet from his side or rear property lines.

Mr. Hanada will select the specimen for reforestation from the Village's approved list of canopy trees, and it will be a hardwood deciduous tree of at least 2 ½" caliper at installation which will grow to a mature height of 45 feet. The Applicant will pay the cost of said tree and any associated costs with planting.

I believe that the foregoing reflects a reasonable resolution of the issues in a manner consistent with Village Board policies.

Submitted by:
Laura Billings
Chairperson
Tree Ordinance Board

Property Address: 3927 Oliver Street

REFORESTATION CONSENT AGREEMENT

RECITALS

This Consent Agreement ("Agreement") is entered into by CHEVY CHASE VILLAGE, ("Village"), a Maryland municipal corporation and Mr. Heinrich Hanada, (the "OWNER"), the owner of the West forty-two (42) feet by the full depth of Lot 14 and the East eighteen (18) feet front by full depth of Lot 15, in Block 3, in the subdivision known as Section 1, CHEVY CHASE, as per plat thereof recorded in Plat Book 4 at Plat Number 312, among the Land Records of Montgomery County, Maryland (the "Property").

The Owner has requested a permit from the Village Manager under Section 17-3 of the Village Code to remove one 14-inch diameter American Elm tree, hereinafter referred to as the "Subject Tree", (the trunk of which measures more than 24 inches in circumference at 4-½ feet above ground and therefore requires a permit for removal) located in the rear yard of the Property as indicated on the plan attached hereto as Exhibit A. The Owner seeks to remove the Subject Tree in order to implement a landscape plan, hereinafter referred to as the "Proposed Work". The Village Manager denied the permit for failure to meet any of the conditions set forth in Section 17-3.

The Owner has appealed the denial of the permit. The appeal was considered under the criteria set by Section 17-5 of the Village Code, by the Tree Ordinance Board ("TOB"), which has issued its recommendation.

The TOB, after following the requirements for notice to confronting and abutting owners and the Village Tree Committee, concluded that the Proposed Work was a legitimate reason for removing the Subject

Tree, that it was necessary to remove the tree to construct the Proposed Work, and that the tree proposed to be removed was not by reason of its age, size or outstanding qualities, including uniqueness, rarity or species specimen, of such nature as to require its preservation.

Based on the foregoing, the TOB provided its recommendation, which has been accepted by the Board of Managers. The Board has decided that it is in the public interest to grant the Owner's appeal, on condition that the Owner sign this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings and obligations herein contained, One Dollar (\$1.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and the Owner hereby agree and covenant as follows:

1. The Owner agrees that, within six months from the effective date of this Consent Agreement, the Owner will plant a Reforestation Tree (or variety thereof) of at least 2-½ inches in caliper, to be selected from the Village's list of approved canopy trees. The Owner agrees to plant the Reforestation Tree on his property in a location depicted on the Reforestation Plan (attached). The Owner also agrees to plant the Reforestation Tree no closer than five feet to any side or rear property line. Should the Reforestation Tree become diseased or die within two years of the effective date of this Agreement, the Owner agrees to replace such tree.
2. Any changes or modifications to the Reforestation Plan shall require the further written consent of the Village, which may be withheld in the Village's sole discretion.
3. The Owner acknowledges that compliance with this Consent Agreement is necessary for the protection of the public health, safety and welfare of the residents of the Village and acknowledges and agrees, in the event of Owner's breach of this Agreement, that the Village would not have an adequate remedy at law, and the Village shall be entitled to specific performance of the Owner's obligations and to injunctive relief related thereto without posting a bond or proving actual damages, in addition to any other

remedies which may be available. The Owner further agrees that the costs incurred by the Village to enforce the Agreement, including legal expenses, shall be charged to the Owner and may be assessed against the Owner's property along with property taxes. The Owner further agrees not to contest any action brought by the Village to obtain specific performance and injunctive relief under this Agreement.

4. The Owner also acknowledges that the Village and the public residing in the Village would incur substantial damages in the event of Owner's breach of the requirements of this Agreement, including, but not limited to, the costs of staff time, arborist time, and other expenses incurred in enforcing this Agreement and the diminution of the Village's tree canopy. The parties recognize the difficulty in computing actual damages and, accordingly, agree to liquidated damages for the aforesaid costs, delay, and harm to the public. The parties acknowledge that liquidated damages of \$1,000.00 are a reasonable estimate, at the time of the execution of this Agreement, of the damages to the Village and the public that will likely occur as a result of the Owner's failure to perform their obligations under this Agreement. The Owner acknowledges that the liquidated damages agreed to are not a penalty and that they, along with any costs incurred by the Village, including legal expenses, may be assessed against the Property along with property taxes.

5. The Owner shall be jointly and severally liable for his obligations hereunder and expressly waives any right to a jury trial.

6. The effective date of this Consent Agreement is the date the Village Manager signs the Agreement signifying that she has been informed by the Village Board of Managers that the Consent Agreement has been approved.

OWNER:

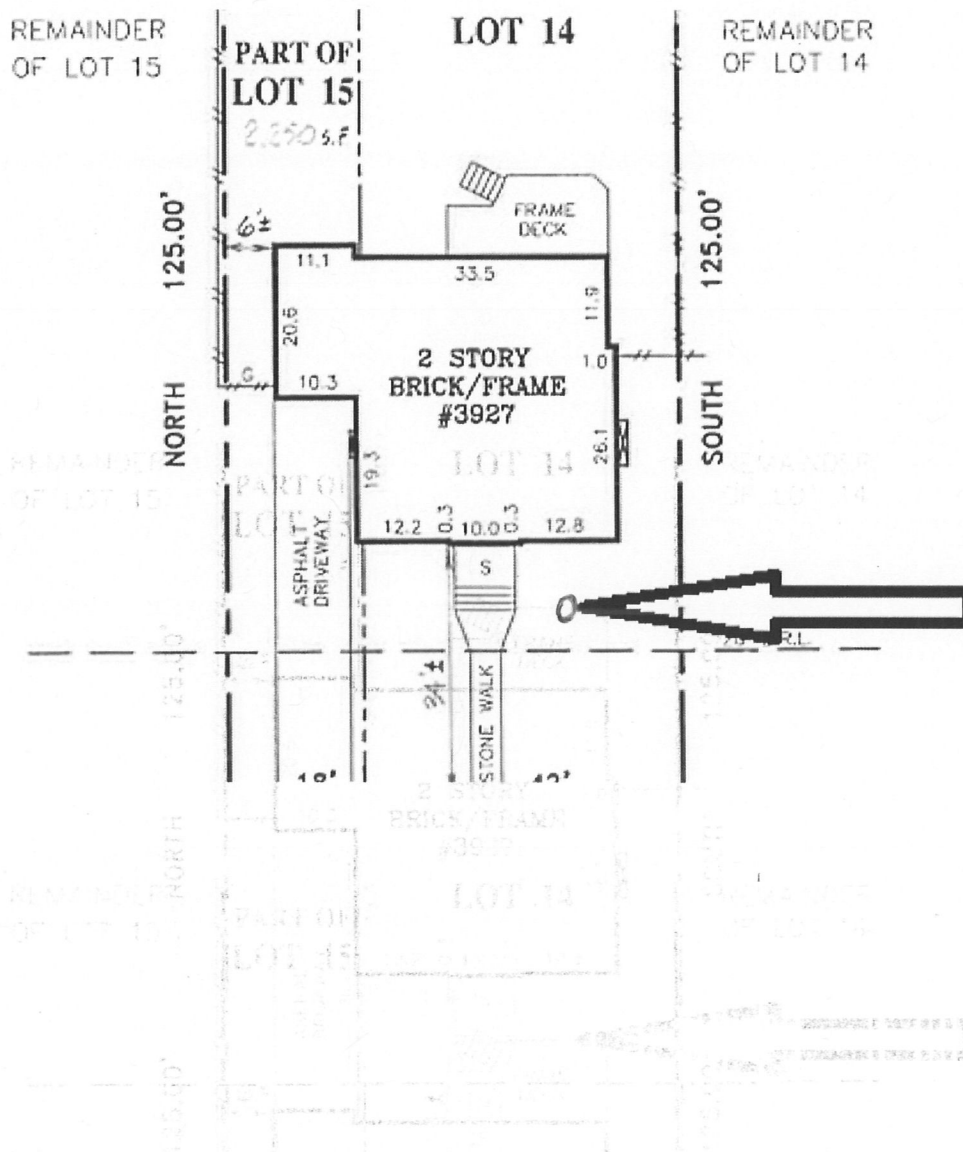
CHEVY CHASE VILLAGE

By: _____
Heinrich Hanada

By: _____
Shana R. Davis-Cook, Village Manager

Date: _____

DRAFT



Case A-2201

Reforestation Plan

3927 Oliver Street, Mr. Heinrich Hanada

Chevy Chase Village

Statement of Appeal for Tree Removal Permit

Subject Property:

3927 Oliver Street

Briefly Describe the Proposed Tree Removal (provide additional detail on following pages):

Entirely remove the stray tree in the northwest corner of the lot

Applicant Name(s) (List all property owners):

Heinrich Miki Hanada

Daytime telephone:

Cell: 202-375-4934

E-mail: miki@hanada.us

Address (if different from property address):

For Village staff use:

Date this form received:

8/26/15

Tree Removal Permit Appeal No:

A-2201

Filing Requirements:

(Application will not be accepted or reviewed until the application is complete.)

☐

Completed *Chevy Chase Village Statement of Appeal for Tree Removal Permit* (this form)

☐

Denied *Chevy Chase Village Tree Removal Permit Application*

☐

Chevy Chase Village Tree Inspection Report from Village Arborist

☐

Surveys, plats, landscaping plans/specifications, or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc. and the tree(s) sought to be removed.

☐

Appeal fee (See fee schedule in Chapter 6 of the Village Code).

Affidavit

I hereby certify that I have the authority to submit the foregoing appeal, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, the Board of Managers, and members of the Village Tree Committee, to enter onto the subject property for the purposes of assessing the site in relation to this appeal. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing statement are true and correct to the best of my knowledge, information and belief.

Applicant's Signature:

H Hanada

Date:

8/26/15

Applicant's Signature:

Date:

Describe the basis for the appeal (attach additional pages as needed)

Describe the reasons why the tree removal would not adversely affect the public health, safety or welfare nor the reasonable use of adjoining properties:

The tree is located in the northwest corner of four adjacent lots. It is not visible from the two
properties on the north and is overshadowed by other trees for the neighbor on the west. It does not
provide shade nor sight protection for any neighbor.

Describe the reasons why the tree removal would not substantially impair the intent and purpose of Chapter 17 of the Chevy Chase Village Code, entitled *Urban Forest*:

The tree is already overshadowed by other trees because of its location and because it has very few
branches. It is unhealthy and most of its branches were dead and therefore pruned.

Describe whether the tree exhibits any of the following criteria: (i) is diseased beyond restoration, insect infested beyond restoration, or injured beyond restoration; (ii) is dead or dying, or in danger of falling; (iii) constitutes a hazard to the safety of persons; (iv) constitutes a hazard to the safety of property; (v) constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees; (vi) is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner:

Power lines run right along the tree. The tree interferes with its cables and has the potential of falling
during a storm.

Describe the reasons for wanting to remove or destroy the tree(s):

The tree will make it difficult to install a fence (as required by a pool), it does not look compatible
with the other trees (on neighboring lots) and it takes away space that could be landscaped.

Describe the reasons, if any, cited by residents who are either in favor of or in opposition to the issuance of the requested tree removal permit:

I see no reason why any neighboring resident would want to keep this tree.

If the desired tree clearing is necessary to achieve proposed development, construction or land use otherwise permitted under the Village Code, describe the proposed project and/or land use and any reason(s) why there is no reasonable alternative to the tree removal:

No development is planned where the tree is currently located.

Describe any proposed reforestation and whether the proposed reforestation includes any trees that meet the Village standards for reforestation (i.e., deciduous hardwood trees that are least 2 ½ inches in caliper at the time of installation and of a species that achieves a mature height of at least 45 feet):

I've already planted three weeping cherry trees that will mature to over 45 feet, although they are just under 2.5 inches. I'm open to any other reforestation suggestions including donating a tree.

Describe any hardship that would result if the requested tree removal is denied:

It will make it difficult to construct a straight back fence, and it will be difficult to landscape the corner that always gets very wet during a storm.

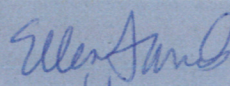
Describe the reasons why preserving the tree(s) is not desirable because of the age, size or outstanding qualities, including uniqueness, rarity or species specimen, of the tree(s):

The tree is already overshadowed by other trees and adds nothing further.

Describe any other relevant matters that you believe would promote fairness and justice in deciding this appeal:

The tree does not nor ever did possess "outstanding qualities". Because of its poor health, there are no leaves except at the very top and only a very long tree stem is visible. It merely obstructs other trees.

In authorizing a Tree Removal Permit as a result of this appeal, the Chevy Chase Village Board of Managers may require such conditions, terms or restrictions as it deems necessary in order to protect the public, health, safety or welfare, the reasonable use of adjoining properties and that will substantially effectuate the purpose and intent of Chapter 17 of the Chevy Chase Village Code.

Appeal Fee: \$250.00	Checks Payable To: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
Fee Paid: <input checked="" type="checkbox"/>	Staff Signature: 
Date Paid:	Date: 10/1/15

Chevy Chase Village Tree Removal Permit Application

Permit No. A-2201

All trees on private property with trunks that measure at least twenty-four (24) inches in circumference (or 7.7 inches in diameter) at four and one-half (4½) feet above ground level require a Village permit to be removed.

Property Address: <u>3927 Alvor St.</u>	
Resident: <u>H. Miki Hanada</u>	
Telephone: <u>202-375-4934</u>	
E-mail: <u>H. Miki Hanada</u>	
Tree Removal Contractor (required):	
Business Name:	
Owner:	
Address:	
Telephone:	Fax:
E-mail:	
MD Dept. of Natural Resources (DNR) License No. (required):	
<i>For Village office staff use:</i>	
Is this property located within the historic district? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Staff initials <u>JS</u>	
Date application submitted to Village Office: <u>10/3/14</u> Date approved or denied: _____	

Village Code Chapter 17. Urban Forest §17-1 and 17-2. Permit Required.

"No person shall remove or destroy, or cause the removal or destruction, of a tree or undertake any action that will substantially impair the health or growth of a tree without first obtaining a permit from the Village Manager. No permit shall be required for normal and reasonable trimming or other tree care designed to maintain the health, shape, or balance of a tree."

Village Code §17-3. Permit Standards.

The Village Manager may issue a permit *only* if at least one (1) of the following conditions applies:

- The tree is diseased beyond restoration, insect infected beyond restoration, or injured beyond restoration;
- The tree is dead or dying, or is in danger of falling;
- The tree constitutes a hazard to the safety of persons;
- The tree constitutes a hazard and threatens injury to property;
- The tree constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees;
- The tree is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner.

An applicant who is denied a tree removal permit by the Village Manager may appeal that decision to the Board of Managers. Any appeal must be in writing and made within ten (10) days of the permit denial.

Filing Requirements

- Copy of the findings and recommendations report from the Village Arborist.
- This completed application, including the tree contractor's name, phone number and MD-DNR License No.
- Payment of \$50.00 per tree filing fee for a Village Tree Removal Permit application, up to a max. of \$350.

Do you plan to reforest on your property? Yes

By signing below, I understand that no work may be performed until the Village permit is issued and posted to be visible from the street.

Applicant's Signature: Handwritten Signature Date: _____

Tree Removal Plans (including reforestation plan, if any)	
Plant 2-3 Higan cherry Trees on the NE side of Property (Rear)	
For Use By Village Manager	Approved with the following conditions:
<div>DENIED For Use By Village Manager OCT 10 2014 Chevy Chase Village Manager</div>	Denied for the following reasons:

Filing Fee: \$50.00/tree x <u>1</u> trees = \$ _____ (up to \$350 max. per application)	Checks Payable to: Chevy Chase Village 5906 Connecticut Avenue Chevy Chase, MD 20815
Damage Deposit <input type="checkbox"/> \$ _____ <input type="checkbox"/> Waived by Village Manager.	Village Manager Signature: Date: _____
Total Fees + Deposit:	Staff Signature: Date: _____

Chevy Chase Village

Tree Inspection Request Form

Property Address: <div style="font-size: 1.2em; margin-top: 10px;">3927 Oliver Street</div>
Date this form submitted to Village office: <div style="height: 20px; border-bottom: 1px solid black; margin-top: 10px;"></div>
Resident Name: Heinrich Miki Hanada Phone: 202-375-4934 E-mail: MIKI@HANADA.US
This request initiated by: <input type="checkbox"/> Village office staff. <input checked="" type="checkbox"/> Resident/property owner
<div style="font-size: 0.9em;"> <input checked="" type="checkbox"/> Inspect tree(s)¹ requested for removal -- are any of conditions in Village Code Sec. 17-3(a) met? <input type="checkbox"/> Inspect trees¹ on property to determine if a Tree Protection Plan (TPP) is needed for proposed project². <input type="checkbox"/> Pursuant to a Village Bldg Permit application², prepare TPP for trees¹ on property [\$250 fee] <input type="checkbox"/> Verify that a TPP has been implemented for Village Building Permit # _____. <input type="checkbox"/> Follow up on an existing TPP -- is it OK to remove TPP? <input type="checkbox"/> Village right-of-way/park <input type="checkbox"/> Other: _____ </div> <div style="font-size: 0.8em; margin-top: 5px;"> ¹ Show location of tree(s) on a plat or site plan (or on diagram on reverse, but only if plat unavailable). ² Attach full description of proposed project. </div>

Sections below must be completed by Village Arborist:

Tree #1: ☒ Private Property ☐ Village right-of-way
Location: ☒ Rear ☐ Front ☐ Side-L ☐ Side-R
DBH*= 14" **Species:** Am Elm **Tag#:** _____ ☐ n/a: no tag.
Assessment: Healthy

Tree #2: ☐ Private Property ☐ Village right-of-way
Location: ☐ Rear ☐ Front ☐ Side-L ☐ Side-R
DBH*= _____ **Species:** _____ **Tag#:** _____ ☐ n/a: no tag.
Assessment: _____

Tree #3: ☐ Private Property ☐ Village right-of-way
Location: ☐ Rear ☐ Front ☐ Side-L ☐ Side-R
DBH*= _____ **Species:** _____ **Tag#:** _____ ☐ n/a: no tag.
Assessment: _____

(For more trees, please check here ☐ and attach pages: # of extra trees ____; # of extra pages ____.)

Arborist assessment: Does tree meet any of the conditions in Village Code 17-3 to qualify for removal?

Removal Approved	Denied	*Is permit required? (i.e, trunk circumference ≥24")	Y	N
Tree #1 <input type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tree #2 <input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Tree #3 <input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Arborist/Staff Signature

Date

10/10/14

Diagram for Tree Inspection/Reforestation Recommendation

(use this diagram ONLY if a plat or site survey is unavailable)

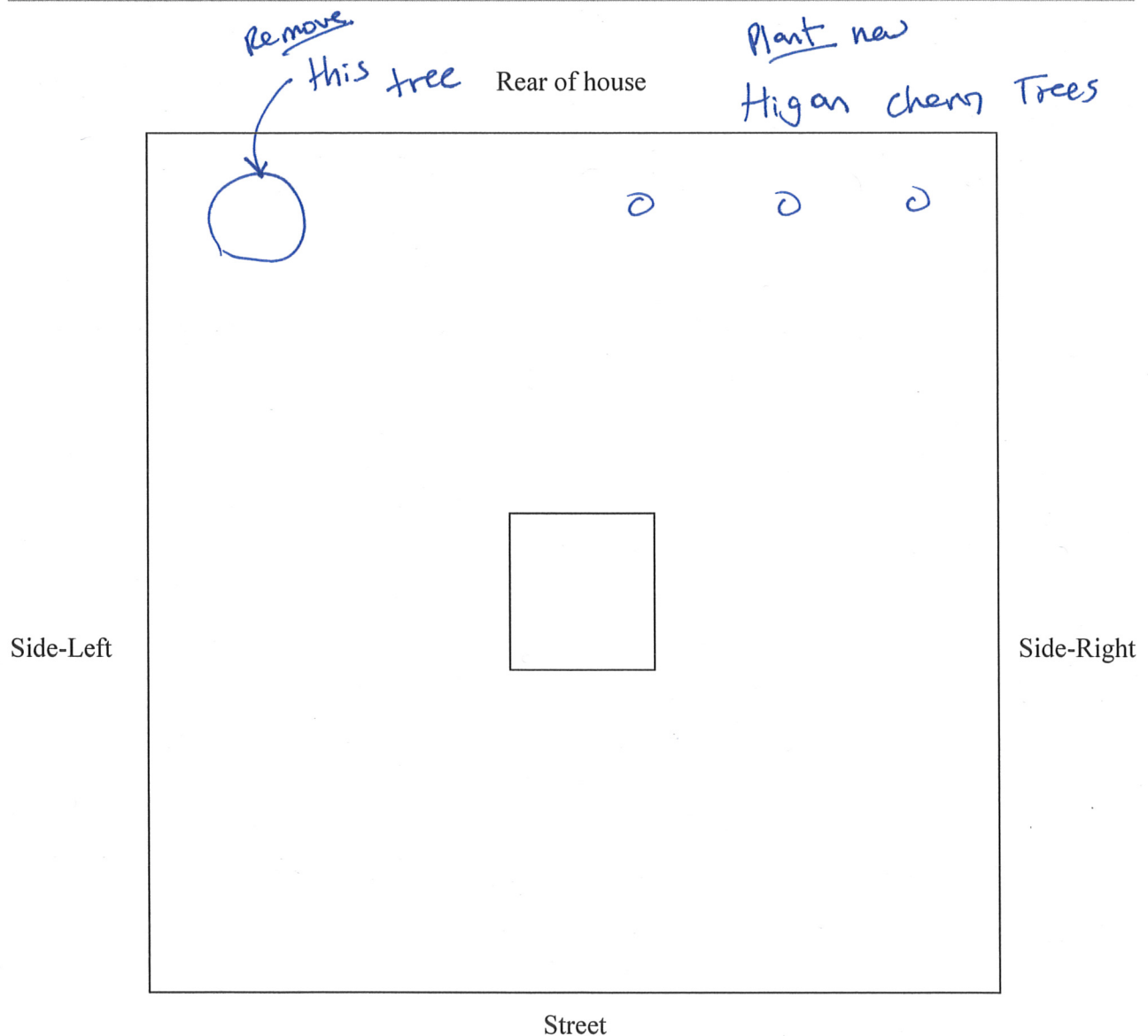
Instructions for Arborist (or) Notes from Arborist:

The tree is growing into power lines and has had many dead branches (already cut) most likely b/c of its health

Arborist Reforestation Recommendation:

Species(s) (in Order of Preference)

Location (in Order of Preference)

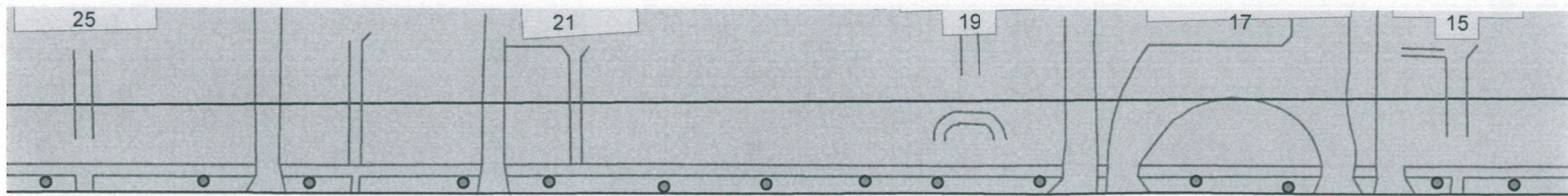


MAILING LIST FOR APPEAL A-2201

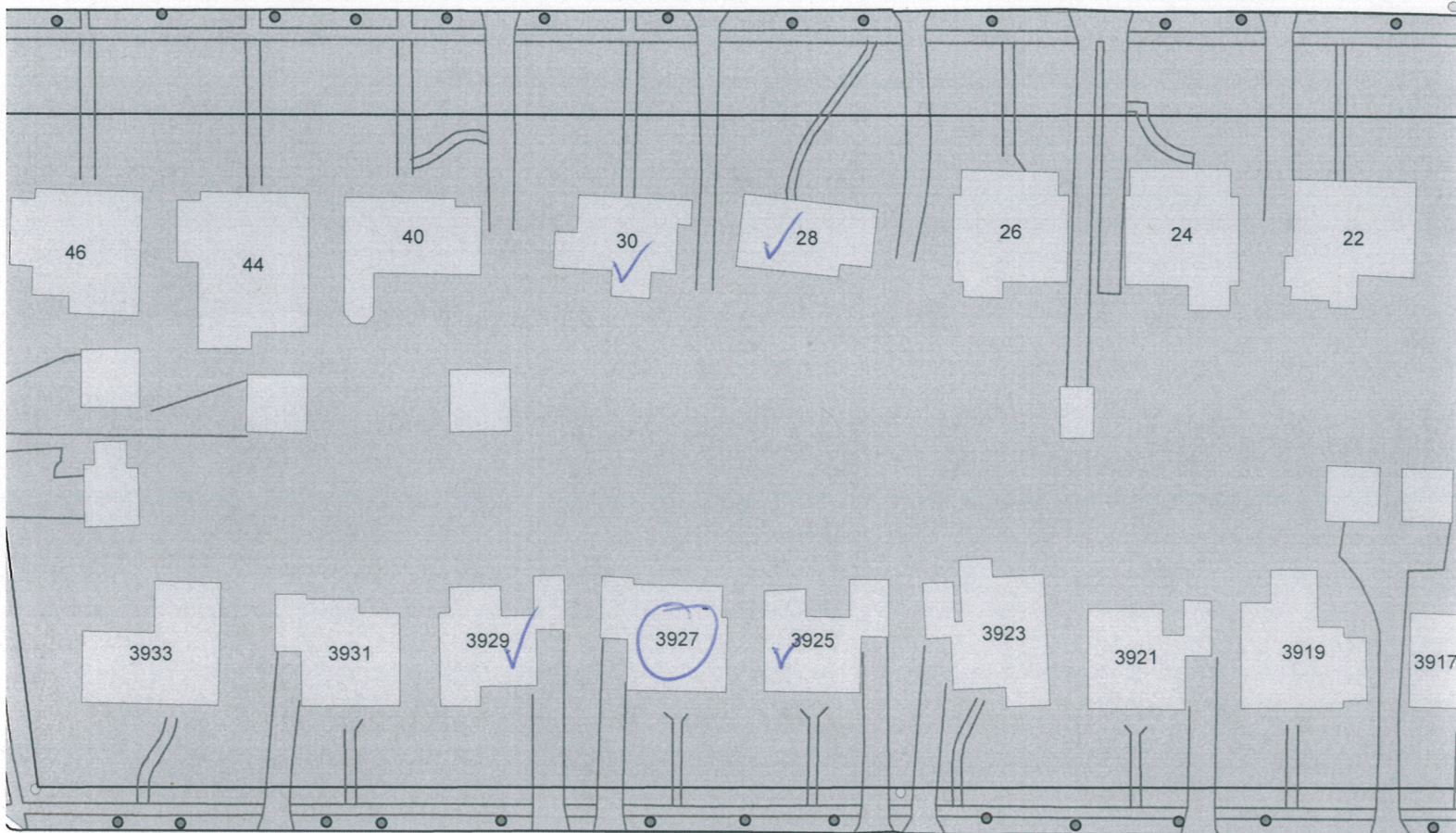
**MR. HEINRICH HANADA
3927 OLIVER STREET
CHEVY CHASE, MD 20815**

Adjoining and confronting property owners

Mr. Jay B. Winik Or Current Resident 30 Grafton Street Chevy Chase, MD 20815	Mr. & Mrs. Timothy Broas Or Current Resident 28 Grafton Street Chevy Chase, MD 20815
Ms. Lara Ariepe & Mr. Guido Lara Or Current Resident 3929 Oliver Street Chevy Chase, MD 20815	Mr. & Mrs. Nick Jacobs Or Current Resident 3925 Oliver Street Chevy Chase, MD 20815
Mr. & Mrs. Jonathan S. Lyons Or Current Resident 3922 Oliver Street Chevy Chase, MD 20815	



GRAFTON ST.



OLIVER ST.

